

## REMARKS

Consideration and allowance of the subject application are respectfully requested.

Claims 1, 3-31, 33 and 35-44 are pending in the application.

Claims 1, 30 and 42 have been amended to incorporate the subject matter of claims 2 and 34. No new matter has been added.

The rejection of claims 1-31 and 33-44 under 35 U.S.C. § 102(b) as being anticipated by Mitchnick is respectfully traversed. The claimed invention is not anticipated by Mitchnick for the following reasons.

The claim language "solid, polymorphic lipid particles" recited in all of the pending claims has been amended to comprise at least one selected from the group consisting of natural and synthetic mono-, di- and triglycerides, their mixtures, fatty alcohols, ethers of the same, individually or in a mixture, cetyl palmitate, glycerol monostearate, glycerol palmitostearate, glycerol ricinoleate, glycerol tribehenate (Compritol), glycerol trilaurate, hard fat (Witepsols), microcrystalline triglycerides (Dynasanes), and stearyl alcohol, individually or in a mixture. Mischnik does not teach or suggest such particles.

The particles disclosed in Mischnik consist of wax (not a solid fat). The wax is defined as a non-water soluble material with a melting point preferentially below 100 centigrade and having a viscosity of less than 500 cp at a temperature of less than 100 centigrade (column 5, lines 11 and 12). Examples given are beeswax and carnauba wax (column 5, line 21). The waxes are defined as esters (produced by esterification).

According to a common definition, a wax is "chemically defined as an ester of a monohydric long chain fatty alcohol with a long chain fatty acid (Encyclopedia of Pharmaceutical Technology, 2<sup>nd</sup> edition, Eds. James Swarbrick and James C. Boylan, Marcel Dekker New York, volume 3, page 2988, 2002).

Furthermore, the smallest size range specified by Mischnik as being most preferable is 1-10 microns (column 4, line 27). The presently claimed particles have a range that below 1 micron, that means 10 nm (= 0.01 micron) to 1000 nm (= 1

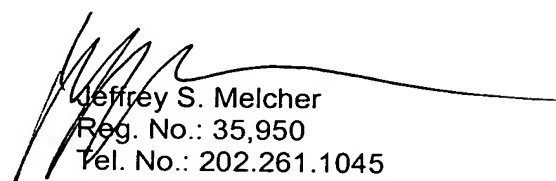
micron). It has been found that particles larger than 1 micron are not effective in sun blocking.

In view of the many differences between the claimed invention and Mischnik, withdrawal of the Section 102 rejection is respectfully requested.

Entry of this amendment and a favorable action on the merits are respectfully requested.

Respectfully submitted,  
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